France, operating in the Barbary States, Africa, was managed by a board of four directors, of whom only one was German. Eight-tenths of the stock, however, was owned by German subjects resident in Germany. The company was engaged in selling the products of its mines in Germany. The company brought an action in France. *Held,* that the large stock ownership by Germans was evidence of German control, and precluded the maintenance of the action. *Mines de Barbary v. Reymond* (Court of Paris, July 7, 1916) reported in (1917) 44 CLUNET, 226.

In this case, the French courts had to deal with the same problem which was presented to the English Court of Appeal in the case of *Daimler v. Continental Tyre Co.* (C. A.) [1915] 1 K. B. 893, and to a New York court in *Fritz Schultz Jr. Co. v. Raimes* (1917, N. Y. Sup. Ct.) 166 N. Y. Supp. 567. See COMMENT in (1917) 27 YALE LAW JOURNAL, 108. It was stated as a *dictum* in the English case that to determine enemy character the court might go behind the English incorporation and ascertain the actual enemy *control* of the corporation, in spite of the rule of English law that the nationality of corporations is governed by the place of incorporation. According to a uniform line of decisions in France, the nationality of corporations is governed by the law of the place of its center of administration (*siège social*). Nevertheless, superimposing upon this rule of "private law" (*sic*) a new rule of public law, a legislative decree of Sept. 27, 1914, had provided that the actual control of corporations by alien enemies was sufficient to permit the sequestration of their property. In the English case the control of the corporation's business was deemed to be in the Board of Directors, toward which the court looked rather than to the stockholders, as was done in the principal case in France. The English view was the one accepted by the New York Supreme Court in *Fritz Schultz, Jr. Co. v. Raimes, supra.*

BILLS AND NOTES—DISCHARGE OF CO-MAKER SURETY UNDER N. I. L.—SURRENDER OF COLLATERAL BY PAYEE.—The plaintiff, payee of a promissory note, sued the defendants whose names appeared as makers but whom he knew to have signed as sureties. The sureties defended on the ground that the plaintiff, without their knowledge or consent, had surrendered to the principal debtor collateral securities. The plaintiff claimed that under the Negotiable Instruments Law this was no defense. *Held,* that the sureties were discharged. *Southern Nat. Life Realty Corp. v. People's Bank* (1917, Ky.) 198 S. W. 543.

According to the law merchant the surrender of collateral security by the creditor, or other conduct prejudicially altering the surety's position without his consent, operated to release the surety wholly or *pro tanto* from liability. *Guild v. Butler* (1879) 127 Mass. 386; *Elsey v. People's Bank* (1915) 166 Ky. 386, 179 S. W. 392. Has the Negotiable Instrument Law changed this equitable rule? This problem has had a checkered career in the courts of Kentucky. It was first held, without reference to the statute, that the old law merchant rule obtained. *Elsey v. People's Bank, supra.* But on petition for rehearing, the court's attention being drawn to section 119, N. I. L., the former opinion was withdrawn and the surety was held liable. *Elsey v. People's Bank* (1916) 168 Ky. 701, 182 S. W. 873. Finally, in the principal case, the court has overruled the latter decision and, frankly admitting that certain sections of the Act were not then considered, has restored the rule that the surety is discharged. The reasoning upon which this conclusion is reached is as follows: In the hands of the payee the note was merely "issued," not "negotiated" (sections 190, 30, N. I. L.), hence the payee was not a "holder in due course" (section 52), and the note was subject to the same defenses as if it were non-negotiable (section 58). When the question arises between the immediate parties to the instrument,

if it be conceded that the payee is not a holder in due course, the court's conclusion seems necessarily to follow. In accord but not cited in the opinion is *Fullerton Lumber Co. v. Snouffer* (1908) 139 Ia. 176, 117 N. W. 50 (extension of time to principal). When, however, the instrument is in the hands of a holder in due course, the statute would appear to cut off the surety's defense. Section 29 declares that a surety whose name appears as maker is primarily liable, irrespective of the knowledge of the holder for value; while the provisions of section 119 as to discharging the instrument may well be deemed to be exclusive, and section 120 to refer only to parties secondarily liable. Such has been the holding in a number of cases which have adjudged the surety liable without referring to section 58. *Vanderford v. Farmer's Nat. Bank* (1907) 105 Md. 164, 66 Atl. 47, 10 L. R. A. (N. S.) 129 (extension of time); *Richards v. Market Exch. Bank* (1910) 81 Oh. St. 348, 90 N. E. 1000, 26 L. R. A. (N. S.) 99 (extension of time); *State Bank v. Jeltz* (1917, Kan.) 167 Pac. 1067.

Bills and Notes—Negotiability—Reference in Note to Extrinsic Agreement.—After an unconditional promise to pay in a note, there was added, "Value received. Rent for month of August, 1915, for . . . , as per contract dated March 24, 1913." On suit brought by a transferee of the note, defendant claimed that this provision made the note non-negotiable and subject to defenses which existed between the defendant and the original holder. *Held,* that the words "as per contract" qualified the promise to pay, and made it subject to the conditions of the contract referred to, and the note was therefore non-negotiable. Provosty, J., *dissenting. Continental Bank and Trust Co. v. Times Publishing Co.* (1917, La.) 76 So. 612.

An instrument, to be negotiable, must be payable unconditionally and at all events. N. I. L., sec. 1 (2). Accordingly it has been held that if a note refers to another writing, so that, on its face, it makes the duty of payment expressly subject to the conditions contained in the other writing, this deprives the note of its status as a negotiable instrument. *Titlow v. Hubbard* (1878) 63 Ind. 6; *Kendall v. Selby* (1902) 66 Neb. 60, 92 N. W. 178; *Hull v. Angus* (1911) 60 Oreg. 95, 118 Pac. 284. But a promise or order may be unconditional, though coupled with a statement of the transaction which gives rise to the instrument. N. I. L., sec. 3 (2). So a reference in an instrument to another agreement does not render it non-negotiable unless it is clearly indicated that the instrument is to be governed by conditions contained in the extrinsic agreement referred to. *National Bank of Newbury v. Wentworth* (1914) 218 Mass. 30, 105 N. E. 626; 3 *R. C. L.* 918. And it has been held in many cases that a provision such as that in the principal case is not sufficient to indicate an incorporation of such conditions. *Taylor v. Curry* (1871) 109 Mass. 36, 12 Am. Rep. 661; *Bank of Sherman v. Apperson* (1880, C. C. W. D. Tenn.) 4 Fed. 25; *National Bank of Newbury v. Wentworth, supra.* The majority of the court in the principal case apparently considered that the words "as per contract" must be read as if directly following the promise to pay and qualifying that promise. Under this interpretation, the decision would be easily supportable. The dissenting judge, however, adopted what seems the sounder view, that these words, in view of their place in the instrument, should be construed as modifying and defining the word "rent," and thus as merely forming a part of the recital of the transaction which gave rise to the notes, identifying the particular rent for which the notes were given.

Carriers—Termination of Relation of Carrier and Passenger—Opportunity to Alight.—The plaintiff was a passenger on one of the defendant's street cars, and, because of a ditch on the sidewalk side of the car, was let down by